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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,985	09/26/2003	Lorraine M. Herger	YOR920030302US1	8862

7590 04/28/2008  
Ryan, Mason & Lewis, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER
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PASS, NATALIE

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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04/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/671,985	<b>Applicant(s)</b> HERGER ET AL.	
	<b>Examiner</b> Natalie A. Pass	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003 & 13 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>27 October 2003</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the application filed 26 September 2003 and the Preliminary Amendment filed 13 March 2008. Claims 1-27 have been canceled. Claim 28 is pending. The Information Disclosure Statement filed 27 October 2003 has been entered and considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Cairnes, et al., U.S. Patent Number 6139494.

(A) As per claim 28, Cairnes teaches a method for use in accordance with patient care, the method comprising the steps of:

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receiving one or more metrics associated with one or more patients (Cairnes; Figure 11, column 5, lines 29-49, column 13, lines 51-53, column 14, lines 44-50);

determining one or more priorities associated with the one or more patients based at least on the one or more metrics (Cairns; column 7, lines 32-40), the step of determining one or more priorities further comprising:

accessing information about the one or more patients (Cairns; column 16, line 38 to column 17, line 10); evaluating the one or more metrics responsive to the information (Cairns; column 16, line 38 to column 17, line 10); and accessing information about a metric, wherein the information about the one or more patients is at least one of medical history, an order of a doctor, and a threshold for a metric (Cairns; column 16, line 38 to column 17, line 10);

determining an ordering of the one or more patients, responsive to the one or more priorities (Cairns; Abstract, column 7, lines 32-40, column 8, lines 29-50);

responsive to the ordering of the one or more patients, transmitting “a message” (reads on “an indicator” to at least one receiver at least one of wirelessly, via Ethernet 802.11, via a cellular network, and via a wide area network, the indicator comprising recommended care (Cairns; column 5, lines 55-57, column 15, lines 7-26, column 16, line 38 to column 17, line 10); and

determining a receiver for the indicator of order of the one or more patients (Cairns; column 7, lines 47-51, column 16, line 38 to column 17, line 12).

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references Kehr, et al., U.S. Patent Application Publication Number 2003/0036683, Hatlestad, et al., U.S. Patent Application Publication Number 2004/0122296, Bulat, U.S. Patent Application Publication Number 2002/0188179, Khanuja, et al., U.S. Patent Application Publication Number 2004/0102683, Bayne, U.S. Patent Number 7249036, Biondi et al, U.S. Patent Number 6839753, Maningas, U.S. Patent Number 6786406, and Sullivan, U.S. Patent Application Publication Number 2002/0077865 teach the environment of electronically prioritizing medical care.

5. Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington D.C. 20231**

or faxed to: **(571) 273-8300.**

For informal or draft communications, please label  
“PROPOSED” or “DRAFT” on the front page of the  
communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher L. Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. A. P./  
Examiner, Art Unit 3626  
April 27, 2008

/Robert Morgan/  
Primary Examiner, Art Unit 3626